

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

LAURA ANN CAVNESS,
Appellant,

and

BRIAN HOWARD WILSON,
Appellee.

CARL ENGSTRAND AND CAITLIN CAVNESS,
Intervenors.

No. 2 CA-CV 2022-0143-FC
Filed May 17, 2023

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Maricopa County
No. FC2012004322

The Honorable Kevin B. Wein, Judge
The Honorable James Drake, Judge

APPEAL DISMISSED

COUNSEL

Laura Ann Cavness, Phoenix
In Propria Persona

IN RE MARRIAGE OF CAVNESS & WILSON
Decision of the Court

Kristin K. Mayes, Arizona Attorney General
By John Hudson, Assistant Attorney General, Phoenix
Counsel for State of Arizona

MEMORANDUM DECISION

Presiding Judge Brearcliffe authored the decision of the Court, in which Judge Eckerstrom and Judge Kelly concurred.

B R E A R C L I F F E, Judge:

¶1 Laura Ann Cavness appeals from the denial of her petition for clarification and justification. We do not have jurisdiction and dismiss the appeal.

Jurisdiction

¶2 We have reviewed the record pursuant to our independent duty to examine our jurisdiction over this appeal. *See Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465 (App. 1997). In April 2018, the superior court, after holding a hearing, held Cavness in contempt under Rule 35.1, Ariz. R. Crim. P.,¹ for violating an order barring her contact with her minor child during a custody dispute. In a footnote to its minute entry for the hearing, the court stated: “To correct the record, the Court was mistaken at the Hearing. While Ms. Cavness is guilty of criminal contempt, this matter is not reflected as a criminal conviction on Ms. Cavness’ record.” Years later, in July 2022, Cavness petitioned the court to explain this footnote. The court denied the petition. Cavness appealed, arguing that she is “entitled to know every mistake the Court made,” including the mistake the court was referring to in the footnote of the minute entry so that she can “not only choose what action she should file, but how to effectively litigate it.”

¶3 Cavness is, essentially, seeking review of the superior court’s order holding her in contempt under Rule 35.1. Rule 35 outlines the procedure for punishing contempt under A.R.S. § 12-864. *Riley v. Superior*

¹The superior court relied on Rule 33.1, Ariz. R. Crim. P., which was renumbered as Rule 35.1 in 2019 without any changes. *See* Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). For ease of reference, we cite the current rule.

IN RE MARRIAGE OF CAVNESS & WILSON
Decision of the Court

Court, 124 Ariz. 498, 499 (App. 1979) (applying former Rule 33). Contempt orders under § 12-864 are not appealable and may only be reviewed by special action.² *Pace v. Pace*, 128 Ariz. 455, 456-57 (App. 1981). While a criminal contempt finding under A.R.S. § 12-861 is appealable under A.R.S. § 12-863(D), conduct is contemptuous under § 12-861 only if it “constitutes a criminal offense,” which was not found here. *See Pace*, 128 Ariz. at 456-57. And even if the contempt did constitute a criminal offense, the time for such an appeal has passed. Ariz. R. Crim. P. 31.2(a)(2)(B) (appeal must be filed within twenty days of judgment or order); § 12-863(D) (“appeal may be taken as in criminal cases”). Therefore, we do not have jurisdiction over Cavness’s appeal, and it must be dismissed. *See Van Baalen v. Superior Court*, 19 Ariz. App. 512, 513 (1973).

Disposition

¶4 For the foregoing reasons, we dismiss the appeal for lack of jurisdiction.

²The same is true for civil contempt adjudications. *Berry v. Superior Court*, 163 Ariz. 507, 508 (App. 1989).